

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

KING DRUG COMPANY OF FLORENCE :

INC. *et al.*, :

Plaintiffs, :

v. :

CEPHALON, INC., *et al.*, :

Defendants. :

CIVIL ACTION
No. 06-cv-1797

VISTA HEALTHPLAN, INC., *et al.*, :

Plaintiffs, :

v. :

CEPHALON, INC., *et al.*, :

Defendants. :

CIVIL ACTION
No. 06-cv-1833

APOTEX, INC., :

Plaintiff, :

v. :

CEPHALON, INC., *et al.*, :

Defendants. :

CIVIL ACTION
No. 06-cv-2768

FEDERAL TRADE COMMISSION, :

Plaintiff, :

v. :

CEPHALON, INC., :

Defendant. :

CIVIL ACTION
No. 08-cv-2141

JOINT STATUS REPORT

Pursuant to this Court's Order of August 29, 2012, the Parties submit the following joint report regarding the status of pending Supreme Court cases arising from *In re K-Dur* and *Federal Trade Commission v. Watson Pharmaceuticals, Inc.*

1. ***Merck & Co., Inc. v. Louisiana Wholesale Drug Co., Inc., et al.*, No. 12-245 and *Upsher-Smith Laboratories, Inc. v. Louisiana Wholesale Drug Company, Inc., et al.*, No. 12-265 (petitions from *In re K-Dur Antitrust Litigation* in the Third Circuit)**

Merck and Upsher-Smith filed petitions for writ of certiorari on August 24, 2012 and August 29, 2012, respectively. Responses to both petitions are currently due by November 5, 2012.¹

Copies of the dockets for 12-245 and 12-265 are attached to this report as Exhibit A.

2. ***Federal Trade Commission v. Watson Pharmaceuticals, Inc., et al.* No. 12-416 (petition from the decision of the Eleventh Circuit)**

The FTC filed a petition for writ of certiorari on October 4, 2012. A response to the petition is currently due on November 5, 2012.

A copy of the docket is attached to this report as Exhibit B.

Assuming that the respondents file their briefs on November 5 or 7, 2012, it is expected that the petitions will be distributed to the Court on November 20, 2012 and considered at the conference on December 7, 2012, with the announcement of the disposition of the petitions sometime thereafter. These dates could change if the respondents' briefs are filed on some other date.

¹ Respondents in *K-Dur* have requested a two-day extension (until November 7) to file their response to both petitions, and we understand the extension has been granted.

Respectfully submitted,

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EXHIBIT A



SUPREME COURT

OF THE UNITED STATES

No. 12-245

Vide 12-265

Title:

Merck & Co., Inc., Petitioner

v.

Louisiana Wholesale Drug Company, Inc., et al.

Docketed: August 24, 2012

Lower Ct: United States Court of Appeals for the Third Circuit

Case Nos.: (10-2077, 10-2078, 10-2079, 10-4571)

Decision Date: August 16, 2012

~~~Date~~~ ~~~~~Proceedings and Orders~~~~~

Aug 24 2012 Petition for a writ of certiorari filed. (Response due September 24, 2012)

Sep 6 2012 Order extending time to file response to petition to and including October 24, 2012, for all respondents.

Sep 10 2012 Consent to the filing of amicus curiae briefs in support of either party or neither party received from counsel for the petitioner.

Sep 24 2012 Brief amicus curiae of Pharmaceutical Research and Manufacturers of America (PhRMA) filed.

Sep 24 2012 Brief amicus curiae of Washington Legal Foundation filed. VIDE.

Sep 24 2012 Brief amicus curiae of New York Intellectual Property Law Association filed. VIDE.

Sep 24 2012 Appendix of amicus New York Intellectual Property Law Association filed. VIDE.

Sep 24 2012 Brief amici curiae of Bayer AG &amp; Bayer Corp. filed. VIDE.

Oct 12 2012 Order further extending time to file response to petition to and including November 5, 2012.

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SUPREME COURT

OF THE UNITED STATES

No. 12-265

Vide 12-245

Title:

Upsher-Smith Laboratories, Inc., Petitioner

v.

Louisiana Wholesale Drug Company, Inc., et al.

Docketed: August 30, 2012

Lower Ct: United States Court of Appeals for the Third Circuit

Case Nos.: (10-2077, 10-2078, 10-2079, 10-4571)

Decision Date: July 16, 2012

~~~Date~~~ ~~~~~Proceedings and Orders~~~~~

Aug 29 2012 Petition for a writ of certiorari filed. (Response due October 1, 2012)

Sep 6 2012 Order extending time to file response to petition to and including October 24, 2012, for all respondents.

Sep 24 2012 Brief amicus curiae of Washington Legal Foundation filed. VIDE.

Sep 24 2012 Brief amicus curiae of New York Intellectual Property Law Association filed. VIDE.

Sep 24 2012 Appendix of amicus New York Intellectual Property Law Association filed. VIDE.

Sep 24 2012 Brief amici curiae of Bayer AG &amp; Bayer Corp. filed. VIDE.

Oct 1 2012 Brief amicus curiae of Generic Pharmaceutical Association filed.

Oct 12 2012 Order extending time to file response to petition to and including November 5, 2012.

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# **EXHIBIT B**



# SUPREME COURT

OF THE UNITED STATES

No. 12-416

Title: Federal Trade Commission, Petitioner  
v.  
Watson Pharmaceuticals, Inc., et al.

Docketed: October 4, 2012

Lower Ct: United States Court of Appeals for the Eleventh Circuit

Case Nos.: (10-12729-DD)

Decision Date: April 25, 2012

Rehearing July 18, 2012

Denied:

~~~Date~~~ ~~~~~Proceedings and Orders~~~~~

Oct 4 2012 Petition for a writ of certiorari filed. (Response due November 5, 2012)

~~Name~~~~~ ~~~~~Address~~~~~ ~~Phone~~~

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